HOUSE No. 4953

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 29, 2010.

The committee on Ways and Means to whom was referred the Bill relative to abandoned vessels (House, No. 4762), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4953).

For the committee,

CHARLES A. MURPHY

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The Commonwealth of Alassachusetts

In the Year Two Thousand and Ten

An Act relative to abandoned vessels.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- SECTION 1. Section 1 of chapter 91 of the General Laws, as appearing in the 2008
- 2 Official Edition, is hereby amended by inserting after the word "forty-three", in line 10, the
- 3 following:-, 43A, 43B, 43C.
- 4 SECTION 2. Said chapter 91, as so appearing, is hereby further amended by striking out sections
- 5 38 to 43, inclusive, and inserting in place thereof the following 10 sections:-
- 6 Section 38. As used in sections 38 to 48, inclusive, the following words shall, unless the context
- 7 clearly requires otherwise, have the following meanings:—
- 8 "Abandoned", unoccupied, deserted, forsaken, derelict, wrecked or sunken vessel or other
- 9 shipwrecked property, on the shores or waters of the commonwealth and not in the custody of
- the owner or his agent or of any other person lawfully authorized to take possession of the vessel
- and deemed by the department or the harbormaster of the city or town in whose jurisdiction the
- 12 vessel lies or whomsoever is so empowered by said city or town to be an obstruction to the safe
- and convenient navigation or other lawful use of such waters.

- "Certificate of number", a document issued by the director stating the name and address of the
- owner and the number awarded to a vessel pursuant to this chapter, except such vessels, other
- than livery boats, owned by a manufacturer of, or dealer in, boats.
- 17 "Certificate of documentation number", a document issued by the United States Coast Guard
- stating the name and address of the owner of a commercial vessel and the identification number
- 19 awarded to a vessel pursuant to this chapter.
- 20 "Claimant", the commonwealth, its political subdivisions, or any person or entity, public or
- 21 private, which desires to acquire title to an abandoned vessel
- 22 "Department", the department of conservation and recreation acting through the division of
- 23 waterways.
- 24 "Director", the director of the office of law enforcement within the executive office of energy
- and environmental affairs.
- 26 "Identification number", the number awarded to a vessel pursuant to this chapter and upon
- 27 approval of an application for a certificate of number or certificate of documentation number.
- 28 "Lienholder", a person or entity holding a lien on a vessel pursuant to generally accepted
- 29 admiralty or maritime law.
- 30 "Office", the office of law enforcement within the executive office of energy and environmental
- 31 affairs.
- "Operator", a person who operates or who has a charge of the navigation or use of a vessel.

- 33 "Owner", a person, other than a lienholder, holding title to a vessel; provided further, that the
- term shall include a person entitled to the use or possession of a vessel subject to an interest of
- another person, reserved or created by agreement and securing payment or performance of an
- obligation, but shall exclude a lessee under a lease not intended as a security interest.
- 37 "Person", a natural person, corporation, association, partnership or other legal entity.
- 38 "Removal costs", costs associated with the removal or destruction of any vessel from land or
- 39 water including the reimbursement of any costs incurred by the claimant in the course of
- 40 acquiring title to an abandoned vessel.
- "Vessel", a boat or watercraft of every description, motorized and non-motorized, except a
- seaplane on the water, used or capable of being used as a means of transportation on water
- 43 including, but not limited to, documented boats and ships, flat bottomed boats, barges, scows and
- rafts and including all equipment, modes of power, and all property aboard the vessel.
- 45 Section 39. It shall be unlawful for any person to willfully abandon a vessel upon public land or
- 46 the shores or waters of the commonwealth or upon private property or the water thereof adjacent
- 47 to public land or the shores or waters of the commonwealth without the consent of the official
- designated by law to have jurisdiction over such public land or waterway, or the owner or other
- 49 person in charge of the private property. Mooring, grounding or otherwise attaching or fastening
- a vessel upon public land or waterway or private property without consent for a period of more
- 51 than 90 days shall constitute prima facie evidence of abandonment. A vessel that the owner,
- operator or lienholder has placed at a storage or repair facility, which is subject to the provisions
- of section 63, sections 179 or 180 of chapter 6, sections 26 to 27D, inclusive, of chapter 9,

section 14 of chapter 255 or any other applicable federal or state law, shall not be considered an abandoned vessel for purposes of this chapter.

Section 40. A claimant wishing to obtain title to a vessel abandoned upon public land or the shores or waters of the commonwealth or upon any private property or the water thereof adjacent to public land or the shores or waters of the commonwealth and not subject to the exclusive jurisdiction of the United States may apply to the office for title under the provisions of this section. If there is more than 1 claimant, the office shall give preference for the claim in the following order: (i) lienholders, in order of priority as determined by admiralty or maritime law; and (ii) the first of the following to file: the department, the office, another political subdivision of the commonwealth, the municipal government or jurisdiction wherein the vessel lies and the government of the United States of America or any political subdivision thereof. In no event shall preference be granted if emergency conditions exist and the procedures under this section would jeopardize navigation, public health or safety. In the event that there is more than 1 equal claimant, the office shall hold an auction, and the title, subject to valid liens as provided for hereunder, shall go to the highest bidder.

Prior to applying to the office for title pursuant to section 41, the claimant shall: (i) if the vessel has an identification number, a registration number, equipment numbers, a certificate of documentation number, a certificate of number or other means of identification, contact the office to determine if the vessel has been stolen; (ii) secure the owner's last known address and the address of any lienholder appearing on record if, after 30 days, the office determines that the vessel is abandoned and not stolen; provided that the claimant shall notify the owner, any known lienholder and the department by certified first class mail, return receipt requested, of the owner's, lienholder's or other party's, required by regulation, address of record; and (iii) if the

owner of record does not reply within 30 days, the claimant shall cause a notice to appear for 3 consecutive printings in a newspaper of general circulation published in the county, city or town of the owner's last known address, or if the owner's name and address are unavailable, where known lienholders have their place of business, or if no lienholder's name and address are known, where the vessel is located, provided that the notice shall include: (1) a description of the vessel and any identifying information; (2) a description of the location where the vessel is situated; (3) a statement informing the owner and any lienholder of their right to reclaim the vessel within 30 days subject to rights of any other lienholder; (4) a statement that failure to claim the vessel will constitute a waiver of all rights, title and interest in the vessel; and (5) a statement that if ownership or a lienholder interest is not claimed and the vessel is not removed within 90 days after the owner, the owner's agent or employee signs the return receipt or within 90 days of the last day of notice by publication, whichever is later, the claimant may apply to the office for title to the vessel. Section 41. If the owner or lienholder fails to claim the vessel within 90 days after the return receipt is received by the claimant or within 90 days of the last day of notice by publication, whichever is later, and if the commonwealth is not the owner pursuant to sections 179 or 180 of chapter 6 or sections 26 to 27D, inclusive, of chapter 9, and if the United States is not the owner pursuant to federal law or regulation, the claimant may apply to the office for a title, subject to any lien which is valid and enforceable under any other statute, including section 9 of chapter 106. The application shall include: (i) a notarized affidavit by the claimant stating that the vessel has been abandoned for at least 90 days, that all notice requirements pursuant to this chapter have been satisfied and that the vessel is not subject to said sections 179 or 180 of chapter 6 or

said sections 26 to 27D, inclusive, of chapter 9 or the requirements of section 63, or any other

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applicable state or federal law or regulation; (ii) if applicable, a copy of the letter to the identified owner and lienholders and accompanying return receipts; provided however, that in the alternative, the claimant may supply a detailed explanation of the unsuccessful steps taken to identify the owner and any lienholder and to secure the address of the owner or any lienholder, including any returned notices; and (iii) in the case of notice by publication, original copies of the notice as published. The office shall certify that the claimant has met the requirements of this section, and such certification shall be included with the records of the granting of the title. Section 42. Except as otherwise set forth in this chapter, or in sections 179 or 180 of chapter 6 or sections 26 to 27D, inclusive, of chapter 9, or any other applicable state or federal law, the office is hereby authorized to grant title to an abandoned vessel, and any contents therein, to a claimant. Upon certification as required pursuant to section 41, and upon payment of any fees or taxes due, the office shall issue the claimant title to the vessel. The applicant shall be responsible for all costs incurred in transferring title. If the claimant wishes to operate the vessel, the claimant shall, if required by law, register the vessel with the office in accordance with chapter 90B or document the vessel under the applicable federal requirements. Section 43. After receiving title, the claimant may remove the vessel, destroy it or sell it. Removal costs shall be borne by the previous owner if that owner has been identified, and otherwise shall be borne by the claimant. If the new owner intends to destroy or otherwise dispose of the vessel, the new owner shall do so in compliance with all related state and federal

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Section 43A. If an abandoned vessel, or an unlawful or unauthorized structure or thing is deposited or suffered to remain in the tide waters of the commonwealth, and if the department

deems it is, or is liable to cause or become, an obstruction to the safe and convenient navigation or other lawful use of such waters, the department shall move it or cause it to be removed, after which time the department may become a claimant and apply for title from the office, in accordance with sections 40 to 43, inclusive.

For a vessel that has been abandoned that does not pose an obstruction to the safe and convenient navigation or other lawful use of the tidewaters of the commonwealth, and for which no other claimant commences proceedings under this chapter within 60 days of the department having notice of the vessel, the department may become a claimant and apply for title from the office, in accordance with said sections 40 to 43, inclusive.

Section 43B. A person who willfully abandons a vessel shall be punished by a fine of not more than \$10,000, except where a vessel, scow, lighter or other structure is or has been grounded within the limits of a harbor or on the shores of the commonwealth by reason of accident, emergency, errors of navigation, or in order to prevent loss of life or the sinking of such vessel, scow, lighter or other structure.

Section 43C. A person who obtains or attempts to obtain title to a vessel through fraudulent means shall be punished by a fine of not more than \$1,000.

Section 43D. The department, in consultation with the office, shall promulgate such rules and regulations as necessary to carry out the provisions of sections 38 to 43C, inclusive.

SECTION 3. Section 49 of said chapter 91 is hereby repealed.

SECTION 4. Sections 72 and 73 of chapter 92 of the General Laws are hereby repealed.